

COUNTY OF DURHAM  
STATE OF NORTH CAROLINA

INTERLOCAL AGREEMENT FOR THE CITY TO PROVIDE  
RECYCLING COLLECTION SERVICES TO DURHAM COUNTY CONVENIENCE SITES

This Interlocal Agreement is made the \_\_\_\_ day of \_\_\_\_\_, 2012, by the City of Durham ("City") and the County of Durham ("County") pursuant to the provisions of GS 160A-460 *et sec.*

Sec. 1. Background and Purpose. The City responded to a Request for Proposals issued by the County, and the County chose to award the City the contract to provide recycling collection services. The City hereby agrees to collect recyclables from the County's convenience centers in return for payment pursuant to the terms set forth in Exhibit A.

Sec. 2. Services and Scope to be Performed. Presumption that Duty is City's. The City shall perform the services specified in Exhibit A, entitled, "Scope of Services," and shall be paid for such services as specified in Exhibit A, which is incorporated by reference into this agreement. In this agreement, "Work" means the services that the City is required to perform pursuant to this agreement and all of the City's duties to the County that arise out of this agreement. Unless the context requires otherwise, if this agreement states that a task is to be performed or that a duty is owed, it shall be presumed that the task or duty is the obligation of the City.

Sec. 3. Reserved.

Sec. 4. Complete Work without Extra Cost. Except to the extent otherwise specifically stated in this agreement, the City shall obtain and provide, without additional cost to the County, all labor, materials, equipment, transportation, facilities, services, permits, and licenses necessary to perform the Work.

Sec. 5. City's Billings to County. Compensation. The County shall pay the City for the Work satisfactorily performed as specified in Exhibit A. The City shall send invoices to the County on a monthly basis for the amounts to be paid pursuant to this agreement. Each invoice shall document to the reasonable satisfaction of the County such information as may be reasonably requested by the County. Within twenty days after the County receives an invoice, the County shall send the City a check in payment for all undisputed amounts contained in the invoice.

Sec. 6. Appointment of Personnel. The City and County shall staff the functions necessary to fulfill this agreement as each sees fit.

Sec. 7. Claims Defense. (a) To the maximum extent allowed by law, the City shall hold the County and its officers, officials, agents and employees ("County and its Agents") harmless from and against all Charges that arise in any manner from City's acts pursuant to this agreement. In

performing its duties under this subsection "a", City shall at City's sole expense defend the County and its Agents with legal counsel reasonably acceptable to County. (b) Definitions. As used in subsections "a" and "c" of this section -- "Charges" means claims, judgments, costs, damages, losses, demands, liabilities, obligations, fines, penalties, settlements, and expenses (included within "Charges" are interest and reasonable attorneys' fees assessed as part of any such item). (c) Limitations of City's Obligation. Subsection "a" of this section shall not require City to hold harmless County and its Agents against liability for damages arising out of bodily injury to persons or damage to property proximately caused by or resulting from the acts of County and its agents. This section shall not be construed as a waiver of any applicable defense of governmental, statutory, or common law immunity, and shall not prevent City from asserting any defense of such immunity; provided that if a court of competent jurisdiction determines that no such immunity applies, then the indemnity provided for herein shall apply.

Sec. 8. Term/Termination. This agreement shall end at 11:59 PM on September 30, 2013, unless further extended by modification pursuant to Section 11(l). If the City and County agree, this Inter-Local Agreement may be extended for two additional two-year terms, for a total of five years, and the City Manager is authorized to execute amendments to so extend the term. Either the City or County may terminate this Agreement prior to the expiration of the Term by giving written notice of such termination to the other party upon at least sixty (60) days prior written notice. Upon termination of this Agreement for any reason, all outstanding invoices for services rendered before the date of termination shall be paid.

Sec. 9. Exhibits. The following exhibits are made a part of this agreement:

Exhibit A "Scope of Services," containing two (2) pages.

In case of conflict between an exhibit and the text of this agreement excluding the exhibit, the text of this agreement shall control.

Sec. 10. Notice. (a) All notices and other communications required or permitted by this agreement shall be in writing and shall be given either by personal delivery, fax, UPS, Federal Express, or certified United States mail, return receipt requested, addressed as follows. The parties are requested to send a copy by email.

To the City:

Director, Department of Solid Waste  
City of Durham  
101 City Hall Plaza  
Durham, NC 27701-3329  
The fax number is (919)\_560-1132.  
Email: Donald.Long@durhamnc.gov

To the County:

Motiryo Keambiroiro  
Director, General Services  
310 South Dillard Street  
Durham, NC 27701  
The fax number is (919) 560-0438.  
Email: mkeambiroiro@durhamcountync.gov

(b) Change of Address. Date Notice Deemed Given. A change of address, fax number, or person to receive notice may be made by either party by notice given to the other party. Any notice or other communication under this agreement shall be deemed given and sent at the time of actual delivery, if it is personally delivered or sent by fax. If the notice or other communication is sent by United States mail, it shall be deemed given upon the third calendar day following the day on which such notice or other communication is deposited with the United States Postal Service or upon actual delivery, whichever first occurs.

Sec. 11. Miscellaneous

(a) Choice of Law and Forum; Service of Process. (i) This agreement shall be deemed made in Durham County, North Carolina. This agreement shall be governed by and construed in accordance with the law of North Carolina. The exclusive forum and venue for all actions arising out of this agreement shall be the North Carolina General Court of Justice, in Durham County. Such actions shall neither be commenced in nor removed to federal court. This subsection (a) shall not apply to subsequent actions to enforce a judgment entered in actions heard pursuant to this subsection

(b) Waiver. No action or failure to act by either of the parties shall constitute a waiver of any of their rights or remedies that arise out of this agreement, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

(c) Performance of Government Functions. Nothing contained in this agreement shall be deemed or construed so as to in any way stop, limit, or impair the City or County from exercising or performing any regulatory, policing, legislative, governmental, or other powers or functions.

(d) Severability. If any provision of this agreement shall be unenforceable, the remainder of this agreement shall be enforceable to the extent permitted by law.

(f) Compliance with Law. In performing all of the Work, the City shall comply with all applicable law.

(j) No Third Party Rights Created. This agreement is intended for the benefit of the City and the County and not any other person.

(k) Principles of Interpretation and Definitions. (1) The singular includes the plural and the plural the singular. The pronouns “it” and “its” include the masculine and feminine. References to statutes or regulations include all statutory or regulatory provisions consolidating, amending, or replacing the statute or regulation. References to contracts and agreements shall be deemed to include all amendments to them. The words “include,” “including,” etc. mean include, including, etc. without limitation. (2) References to a “Section” or “section” shall mean a section of this agreement. (3) “Contract” and “Agreement,” whether or not capitalized, refer to this instrument. (4) “Duties” includes obligations. (5) The word “person” includes natural persons, firms, companies, associations, partnerships, trusts, corporations, governmental agencies and units, and other legal entities. (6) The word “shall” is mandatory. (7) The word “day” means calendar day. (8) The word “Work” is defined in Section 2. (9) A definition in this agreement will not apply to the extent the context requires otherwise.

(l) Modifications. Entire Agreement. A modification of this agreement is not valid unless signed by both parties and otherwise in accordance with requirements of law. Further, a modification is not enforceable against the City unless it is signed by the City Manager, a deputy or assistant City Manager, or, in limited circumstances, a City department director. This agreement contains the entire agreement between the parties pertaining to the subject matter of this agreement. With respect to that subject matter, there are no promises, agreements, conditions, inducements, warranties, or understandings, written or oral, expressed or implied, between the parties, other than as set forth or referenced in this agreement.

(m) City’s Manager’s Authority. To the extent, if any, the City has the power to suspend or terminate this agreement or the City’s services under this agreement, that power may be exercised by City Manager or a deputy or assistant City Manager without City Council action.

IN WITNESS WHEREOF, the City and the County have caused this agreement to be executed under seal themselves or by their respective duly authorized agents or officers.

**CITY OF DURHAM**

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**Thomas J. Bonfield**

**City Manager, City of Durham, NC**

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Budget and Fiscal

Control Act.

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**George K. Quick, Durham**

**County Finance Officer**

**COUNTY OF DURHAM**

By: \_\_\_\_\_

**Motiryo Keambiroiro**

**Director, Solid Waste Management**

## **Exhibit A:**

### **Scope of Service**

- 1. Monthly Service Costs per site and Frequency.** The City shall provide recycling collection services for the four Durham County convenience collection sites as follows:

<b>Convenience Site</b>	<b>Monthly cost per site</b>	<b>Frequency and Service Day</b>
Bahama-Quail Roost & Ball Road	\$2,722	3 x per week Monday, Wednesday, and Friday
Redwood & Electra Road	\$2,490	3 x per week Monday, Wednesday, and Friday
Rougemont- Hwy 501 North & Bill Poole Road	\$1,621	2 x per week Monday and Friday
Parkwood-Hwy 55 & TW Alexander Drive	\$1,853	2 x per week Monday and Friday
<b>TOTAL</b>	<b>\$8,686</b>	

All collections shall be taken to Sonoco Recycling facility in Durham. The City will keep the revenue associated with the sale of recyclables.

**2. Additional Service Request(s)**

The City will provide additional collections for \$150.00 per collection. The County will be invoiced \$150.00 for each additional collection above the monthly allowance.

**3. Semi-Annual Fuel Surcharge**

The Base Fuel Price for this agreement is \$2.73 per gallon of diesel fuel. A fuel surcharge will be assessed semi-annually (twice per year). Should the average semi-annual diesel fuel cost exceed the established Base Fuel Price, the County will be assessed a fuel surcharge. The fuel surcharge shall be 1% of the semi-annual cost of service for every \$.05 that the average semi-annual diesel fuel cost exceeds the Base Fuel Price.

On the last day of each month during the contract term, the City's Fleet Management Department will report to the City's Solid Waste Management Department the cost per

gallon of diesel fuel that Fleet charges City departments. Every six months, these prices will be averaged and compared to the Base Fuel Price to determine if a fuel surcharge shall be assessed. The City shall report to the County its calculations of the fuel surcharge, along with the underlying fuel prices from which the surcharge was derived. Should the semi-annual diesel fuel average be at or below the established Base Fuel Price, the County will not be invoiced a diesel fuel surcharge, but neither shall there be any reduction in billing by the City.

#### Fuel Surcharge Example\*

Base Fuel Price	City's Semi Annual Fuel Average	Surcharge % increase	Cost increase	Adjusted Monthly Cost
\$2.73	\$2.73	0	0	\$8,686.00
\$2.73	\$2.78	1%	\$86.86	\$8,772.86
\$2.73	\$2.83	2%	\$173.72	\$8,859.72
\$2.73	\$2.88	3%	\$260.58	\$8,946.58
\$2.73	\$2.93	4%	\$347.44	\$9,033.44
\$2.73	\$2.98	5%	\$434.30	\$9,120.30
\$2.73	\$3.03	6%	\$521.16	\$9,207.16

\*The above chart provides examples of how the Fuel Surcharge is calculated. Should the City's semi-annual fuel average exceed the examples shown, invoicing from the City will be based on actual prices, and shall not be limited by the examples shown in the chart.

#### 4. Clean Up

The City will be responsible for cleaning up any recyclable material that is spilled while collecting from the County's sites. The City will not be responsible for items not properly placed in containers.

#### 5. Contamination

For the length of this agreement, the material received must not exceed 10% contamination per load that is removed from each County site. If the load is deemed in

excess of 10% contaminated by the recycling vendor and rejects the load, the County will be invoiced \$42.50 per ton for disposal of the contaminated material plus an additional \$25.00 transport fee for the trip to the City's transfer station.

## **6. Audit Rights**

For all Services being provided hereunder, the County shall have the right to inspect, examine, and make copies of any and all books, accounts, invoices, record and other writings relating to the performance of the Services the City is providing as a result of this interlocal agreement. Audits shall take place at times and locations mutually agree upon by both parties. Notwithstanding the foregoing, the City will make the material to be audited available within 7 business days of being requested.